

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB      SEPT 29, 98

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

---

Trademark Trial and Appeal Board

---

In re Monarch Business Forms

---

Serial No. 75/173,118

---

Walter N. Wetterman, Esq. for Monarch Business Forms.

Cheryl Butler, Trademark Examining Attorney, Law Office 107  
Thomas Lamone, Managing Attorney).

---

Before Hanak, Quinn and Hohein, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Monarch Business Forms has filed an application to  
register "MONARCH" as a "house mark for business forms."<sup>1</sup>

Registration has been finally refused under Section  
2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that  
applicant's mark, when applied to its goods, so resembles the  
mark "MONARCH," which is registered for "loose-leaf structures--  
namely, ring binders and report covers,"<sup>2</sup> as to be likely to  
cause confusion, mistake or deception.

---

<sup>1</sup> Ser. No. 75/173,118, filed on September 27, 1996, which alleges dates  
of first use of November 30, 1978.

<sup>2</sup> Reg. No. 1,193,967, issued on April 20, 1982, which sets forth dates  
of first use of May 1, 1980; combined affidavit §§8 and 15.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

Inasmuch as the respective marks are identical in all respects, the issue of likelihood of confusion is essentially dependent upon whether applicant's and registrant's goods are sufficiently related in a commercial or other meaningful sense. Applicant, while acknowledging in its opening brief the "sound principle" stated by the Examining Attorney, namely, "that 'where the marks of the respective parties are identical, the relationship between the goods or services of the respective parties need not be as close to support a finding of likelihood of confusion as might apply where differences exist between the marks,'" argues that in this case the respective goods simply are not related. Specifically, while conceding in such brief that "if the Examiner's point were supported by facts found in the record her contention would be correct," applicant maintains that the evidence furnished by the Examining Attorney (discussed later in this opinion) is insufficient to show a commercially significant relationship between the respective goods.

Aside therefrom, applicant contends that "the record is uncontradicted that Applicant's goods do not travel in the same trade channels" as do registrant's products. The sole basis for such assertion, however, is the statement, which while made by applicant in its initial response to the refusal to register is not supported by any affidavit or declaration from an officer or other employee of applicant with personal knowledge thereof, that

its business forms "are made-to-order for, and shipped directly to, the specific customer; they are not stock items sold in bookstores or stationery stores." By contrast, applicant insists that registrant's loose-leaf ring binders and report covers "are customarily sold by generic mail-order or in stationery stores" and thus the respective channels of trade for applicant's and registrant's "MONARCH" products "are mutually exclusive."

Applicant also relies upon the unsupported statement, made in its initial response to the refusal to register, that while it has used its mark for nearly 19 years and registrant "has allegedly used" the same mark for over 30 years, applicant has not experienced any instance of actual confusion. Applicant urges that in light of the "obvious probative value" of such statement, it must be inferred that "the absence of confusion is due to the unlikelihood that it will ever occur in a material way."

We agree with the Examining Attorney, however, that contemporaneous use of the identical mark "MONARCH" in connection with "business forms" and "loose-leaf structures--namely, ring binders and report covers" is likely to cause confusion as to the source or sponsorship of such goods. Although applicant contends that "[i]t is the custom-printed aspect of the Applicant's products ... which separates its products from the stationery-store items" marketed by registrant, we note that as identified in the respective application and registration, neither applicant's goods nor those of registrant contain any specific or inherent limitation as to their channels of trade and classes of

purchasers. It is well settled, however, that the issue of likelihood of confusion must be determined on the basis of the goods as they are set forth in the involved application and cited registration. See, e.g., CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); Squirtco v. Tomy Corp., 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983); and Paula Payne Products Co. v. Johnson Publishing Co., Inc., 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973). Thus, where the goods in the application at issue and in the cited registration are broadly described as to their nature and type and there are no restrictions, as is the case herein, in the respective identifications of goods as to the channels of trade or classes of customers, it is presumed in each instance that in scope the application and registration encompass not only all goods of the nature and type described therein, but that the identified goods move in all channels of trade which would be normal for such goods and that they would be purchased by all potential buyers thereof. See, e.g., In re Elbaum, 211 USPQ 639, 640 (TTAB 1981). No weight, therefore, may be given to applicant's contentions regarding difference in distribution channels and intended purchasers for the respective goods.

Moreover, in support of her position that business forms are closely related to loose-leaf ring binders and report covers, the Examining Attorney has made of record portions of the index from a Miller's Office Products catalog, which lists both business forms and ring binders, to demonstrate that "business forms and binders, as well as other office requisites and

stationery supplies, travel in the same channels of trade." The Examining Attorney has also furnished over a dozen use-based third-party registrations for marks which, in each instance, are registered among other things for "business forms," on the one hand, and various "binders," including "ring binders," "journal binders," "ledger binders" and "loose-leaf binders," on the other. Two of such registrations additionally include "report covers" and a third also lists "report binders." Although such registrations are not evidence that the different marks shown therein are in use or that the public is familiar with them, they nevertheless have some probative value to the extent that they serve to suggest that the goods listed therein are of a kind which may emanate from a single source. See, e.g., In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1785-86 (TTAB 1993) and In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467, 1470 (TTAB 1988) at n. 6.

In view of the above evidence, and since as noted previously, applicant's "business forms" encompass all types of such forms and are not limited to custom-printed products, we concur with the Examining Attorney that "business forms" and loose-leaf "ring binders and report covers" are closely related office stationery supplies which would be sold through the same channels of trade to the identical classes of purchasers. When such closely related goods are sold under the identical mark "MONARCH," confusion as to the origin or affiliation thereof is likely to occur.

Our conclusion in this regard is not diminished or otherwise altered by applicant's unsupported statement that it has not encountered any incidents of actual confusion between its mark and registrant's mark during almost 19 years of use. While we agree with applicant that the absence of any instances of actual confusion over a significant period of time is a factor indicative of no likelihood of confusion, it is a meaningful factor only where the record demonstrates appreciable and continuous use by the applicant of its mark in the same markets as those served by registrant under its mark. See, e.g., Gillette Canada Inc. v. Ranir Corp., 23 USPQ2d 1768, 1774 (TTAB 1992). It is not a mitigating factor where, as here, the record is devoid of information concerning the nature and extent of the marketing activities of applicant and registrant under their respective marks during the asserted period of contemporaneous use.

In the present case, we not only have no details as to the level of sales, advertising expenditures and marketing areas served by applicant, but we have no indication as to what registrant's experience has been, other than the statement-- obviously without probative value--that registrant "has allegedly used" its "MONARCH" mark for over 30 years. Compare In re General Motors Corp., 23 USPQ2d 1465, 1470-71 (TTAB 1992). We accordingly agree with the Examining Attorney that purchasers and potential customers, familiar with registrant's "MONARCH" mark for loose-leaf ring binders and report covers, would be likely to believe, upon encountering applicant's identical "MONARCH" mark

**Ser. No.** 75/173,118

for business forms, that such closely related office stationery supplies emanate from, or are sponsored by or affiliated with, the same source.

**Decision:** The refusal under Section 2(d) is affirmed.

E. W. Hanak

T. J. Quinn

G. D. Hohein  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board